

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 841 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

AND

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

GULAMNABI M MALEK

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Appearance:

Mr. S.T. Mehta, APP for the appellant State.  
MR MTM HAKIM for Respondent No. 1 (Not Available)

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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE H.R.SHELAT

Date of decision: 16/06/1999

ORAL JUDGEMENT (Per: J.N. Bhatt, J.)

The short question which has emerged for consideration in this acquittal appeal under Section 378 of the Criminal Procedure Code (Code) is whether the respondent original-accused is proved to have demanded or accepted bribe from the original-complainant Bhikhabhai

Bhupatsinh and whether the charge against the accused is established without any doubt.

2. In order to answer the aforesaid question, let us have a look into skeleton of projection of facts emerging from the record. In that, the prosecution case has been that the accused was working at the relevant time as Unarmed Police Constable at Kalamsar Outpost of Khambhat Taluka, Kheda District. One Urmila had filed complaint against the complainant - prosecution witness one Bhikha Bhupatsinh before the learned Judicial Magistrate (F.C.), Khambhat and pursuant to the order of the Court, the accused was in-charge of the investigation of the said complaint. In course of that investigation, complainant was contacted by the accused at his outpost on 5-11-1986 and at that time accused illegally demanded Rs. 600/- by way of an illegal gratification from the complainant Bhikhhabhai. Complainant manifested his inability to pay the amount demanded and therefore upon negotiations it came to be reduced and agreed upon to the sum of Rs. 200/- which was to be paid on next day, like that 6th November 1986 at about 8.00 p.m.

3. In the meantime, the complainant approached the officers of the Anti-Corruption Bureau and narrated the complaint to one P.S.I. Rathod, who, after making necessary procedure for drawing Panchnama, and after collecting notes of Rs. 200/-, each one of Rs. 100/denomination from the complainant, arranged for laying a trap. Thus, it is the prosecution version that the accused illegally demanded the amount from the complainant and he had also accepted the bribe money from the complainant Bhikhhabhai and the accused was caught red-handed while accepting the amount of bribe from the complainant in presence of panch witnesses. Upon completion of the investigation, the charge followed in the court of the Special Judge, Kheda at Nadiad. The charge was framed to which accused denied and claimed to be tried. The prosecution therefore placed reliance on the following four prosecution witnesses;

P.W. Name Exhibit  
No.

1. Bhikhhabhai Bhupatsinh. 17
2. Chetankumar Somabhai Pargi 20
3. Kishoresinh Babusinh Rathod 24
4. Sitaram Vishwanath 26

Upon the assessment and evaluation of the evidence relied upon by the prosecution and examination of the documents,

the learned Special Judge reached to a conclusion that the prosecution has not been able to prove the complicity of the accused to the guilt. Consequently, respondent original-accused came to be acquitted of the charges under Section 161 of Indian Penal Code and of Section 5(1)(d) read with Section 5(2) of The Prevention of Corruption Act, 1947, as it then stood by passing impugned acquittal judgement on 22nd June 1988, and hence this appeal. Incidentally, we may mention that we are hearing this appeal of acquittal almost after 10 years. It is against that judgment and order of learned Special Judge, Mr. H.R. Kamodia, Kheda, at Nadiad, which is questioned before us in this appeal.

4. After having considered the documentary evidence and the viva voce evidence of the prosecution and the submissions raised before us, we have not been able to persuade ourselves to agree with the submission of learned Public Prosecutor, Mr.S.T. Mehta and to disagree totally with the reasons and the ultimate conclusions assigned by the learned Special Judge. Needless to mention, that in an acquittal appeal, as per the settled proposition of law, merely because a better plausible view or perception is conceivable from the record of the case, ipso facto, would not suffice to quash and set aside the view taken by the trial Court which could not be said to be perverse. In other words, the assessment and analysis of the evidence permits two perceptions, and one of which is taken by the trial Court itself would not constitute a ground for setting aside and to reverse the plausible view taken by the trial Court. Again, it may also be noted that it is also a settled proposition of law, that when an appellate Court broadly agrees with the reasons and the grounds expounded in support of the ultimate conclusions by the trial Court, it would not be necessary to meticulously and minutely divulge on each and every such ground as it would be nothing but repetition of the same.

5. However, since we are addressed by the learned Additional Public Prosecutor about the assessments made by the trial Court, we would like to highlight certain important material aspects of the trial. The prosecution witness No.1 - complainant Bhikhabhai Bhupatsinh examined at Ex. 17 is not relied on by the trial Court for which substantially various reasons are enumerated by the trial Court. He has also indicated certain inherent improbabilities in the testimony of the complainant Bhikhabhai. Again, the panch witness Chetankumar Somabhai Pargi, prosecution witness No.2 examined at Ex.20 has not fully reinforced the version of the

complainant as mentioned by the learned Special Judge in the impugned acquittal judgment. Not only that, the learned Special Judge has also taken support from certain unusual aspects and uncommon demeanor of the prosecution witnesses in general, and the complainant Bhikhabhai in particular. How can it be gainsaid that the observation of the learned Special Judge, that there was no reason why the complainant who belonged to Kheda District opted for lodging his complaint before ACB officers at Ahmedabad is a right one. We do not propose to see that it is impossible but it is unusual. It is uncommon which has not been satisfactorily accounted for. Again, the accused, who was entrusted the investigation into the enquiry pursuant to the judicial order of the learned Magistrate, had no axe to grind against the complainant of this case and the complainant of the case before the learned Magistrate. It will be also interesting to articulate at this juncture that the manner and mode in which the panch No.1 prosecution witness No.2 Chetankumar has testified at Ex.20, insofar as the demand episode was concerned. Could it not be said to be unusual and uncommon, when parties have settled a deal for a particular sum, then there was no necessity for the prosecution witness to inquire from the accused or there was no requirement for the accused to demand as to what would happen about the remaining amount. This aspect is precisely taken by the learned Special Judge as highly suspicious, to which we could not be successfully countered by the learned Additional Public Prosecutor.

6. In short, the culpability of the accused, for the offences punishable under Section 161 of the Indian Penal Code and Sec. 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947, as it then stood, could not be established by the prosecution, without doubt, and such a conclusion recorded by the learned Special Judge, in our opinion, could not be said to be unjustified or perverse, warranting our interference exercising our powers under Section 378 of the Criminal Procedure Code. With the result, the appeal merits dismissal.

7. Before parting, we would like to place it on record, that though the accused was in the service of Home Department, and since he was 54 at the time of alleged complicity, by passage of 13 years his superannuation must have been reached, and since we have not been enlightened as to what has happened to his service career, we deem it expedient to mention that the acquittal recorded by the learned Special Judge, and which is being confirmed by us in this appeal while dismissing it, obviously, should not tantamount to a

hindrance or an impediment in taking or proceeding with pending departmental actions, if any. With this parting thought, we conclude and dismiss the acquittal appeal at the instance of the State. The accused is on bail bond, and obviously his bail bond stands cancelled forthwith.

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